Remarks

In the non-final Office Action dated January 27, 2009, the following new grounds of rejections are present: claims 1, 5 and 12-15 stand rejected under 35 U.S.C. § 102(e) over the Tung reference (U.S. Patent No. 6,948,058); claims 10-11 stand rejected under 35 U.S.C. § 103(a) over the Cohn reference (U.S. Patent 6,317,791) in view of the Cromer reference (U.S. Patent No. 6,304,899); and claims 2-4 and 6-9 stand rejected under 35 U.S.C. 103(a) over the '058 reference in view of the '791 reference. Applicant traverses all of the rejections and, unless explicitly stated by the Applicant, does not acquiesce to any objection, rejection or averment made in the Office Action.

Applicant respectfully submits that the Examiner continues to overlook aspects of the present invention that relate to parallel booting and receiving of multimedia content. None of the cited references teach this aspect. Applicant requests clarification because while the cited references might boot a computer, none of the references appears to have anything to do with parallel accesses to multimedia data during booting. For example, none of the references teach or suggest that three modules be run in parallel (*see, e.g.,* claim 1). The Examiner has never clearly articulated how correspondence to such parallel aspects of three different modules is being alleged. As near as can be ascertained from the cited references, the Examiner is improperly using sequentially-implemented steps rather than addressing the parallel nature of the claimed invention.

Stepping back and separate from the content of the instant claims, the invention described in the Applicant's specification is substantially unrelated to any teachings in the cited references. Applicant has both explained these differences and attempted to introduce additional claim limitations which provide further differentiation. The Examiner has not offered any constructive suggestions. "When an application discloses patentable subject matter and it is apparent from the claims and the applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and when possible should offer a definite suggestion for correction....If the examiner is satisfied after the search has been completed that patentable subject matter has been disclosed and the record indicates that

the applicant intends to claim such subject matter, he or she may note in the Office action that certain aspects or features of the patentable invention have not been claimed and that if properly claimed such claims may be given favorable consideration." M.P.E.P. § 706. Applicant respectfully requests acknowledgement of patentable subject matter, especially if the Examiner is merely disagreeing about the scope or interpretation of various claim limitations. Applicant reiterates that none of the cited references relate to accessing multimedia content from a third-party provider (*e.g.*, using a CGI script) during booting. Applicant has explained how the claims include limitations directed toward such aspects. Moreover, Applicant has introduced additional amendments (see claims 2 and 6) to facilitate prosecution. Accordingly, Applicant requests constructive suggestions from the Examiner to further prosecution because the cited references are substantially unrelated to Applicant's invention.

Applicant respectfully traverses each of the rejections of claims 1-11 and 12-15 because the '058 reference is unrelated to the claimed invention. Simply put, the '058 reference teaches a mechanism for using a computer as a CD-player without the need to perform the boot/POST process for a computer. As such the '058 reference is unrelated to Applicant's claimed invention, which includes limitations directed towards receiving multimedia content over a network during booting. Applicant respectfully submits that the teachings of the '058 reference are therefore substantially unrelated to the claimed invention. As it appears that there may be some confusion as to the teachings of the '058 reference Applicant provides the following clarification of what the '058 reference appears to teach and, consequently, what the '058 reference does not teach.

The computer of the '058 reference is turned on in two modes. In first mode, "if the computer is turned on using the conventional ON/OFF button, then it is considered as the usual power on procedure." *'058 reference*, Col. 2:38-40. In the second mode, "if the user uses one of the multimedia hot keys provided on the keyboard or mouse to turn on the computer power, then it is considered as the power on procedure to use the computer as an MP3 or video player." *'058 reference*, Col. 2:42-45. The '058 reference explains that the first mode is a normal Power-On Self-Test (POST) procedure and the second mode is specifically designed not to perform the POST procedure. Instead, the second mode simply plays multimedia content from a local CD player, MP3 player or the

like. There is no need, desire or teachings related to accessing a third-party device over a network. Moreover, there is no correspondence to the claim limitations directed towards three different modules that are each implemented in parallel.

Applicant further submits that the proposed modification, in view of the '791 reference, does not correspond to the claimed invention and is improper because it would both defeat the purpose of the '058 reference and it would change the principle operation of the '058 reference. As explained above, the primary purpose of the '058 reference is to allow "simple playing" of multimedia objects without performing POST procedures of the boot process. '058 reference, Col. 1:44-55. The proposed modifications take aspects of the '791 reference that occur after the computer has booted, presumably implemented after any POST procedures. Thus, the combination would seemingly require that the primary purpose of the '058 reference be overlooked and removed because the aspects taken from the '791 reference are taught to be implemented only after the computer has booted. "If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." M.P.E.P. § 2143.01 citing In re Gordon, 733 F.2d 900 (Fed. Cir. 1984). "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious." M.P.E.P. § 2143.01 citing In re Ratti, 270 F.2d 810 (CCPA 1959). Accordingly, any ascertainable combination of the cited references would be improper and would fail to correspond to the limitations of claims 1-9 and 12-15.

Applicant respectfully traverses the rejections of claims 10-11 over the '791 reference in view of the '899 reference. Applicant's previous explanation of the improper interpretation of the references has not been addressed. The entirety of the Examiner's Response to Arguments section (pages 19-20) fails to assert that downloading is taught during booting. Applicant did not disagree that the references, at some time, teach a boot process. In pertinent part, Applicant previously explained that the cited references lack any teachings directed to access to multimedia data during booting. It is unclear how the Examiner's statement that "Cohn discloses a personal computer where the booting is performed (Cohn, column 5, lines 14-25)" is relevant.

Regardless of whether or not the references perform booting, the references do not teach correspondence to multimedia access/requests performed during booting. Thus, Applicant's previous arguments have not been addressed or rebutted by the Examiner and the rejections remain improper. Applicant maintains that neither the '791 reference nor the '899 reference teach accessing/requesting multimedia content both from a third party and during booting. The record is therefore undisputed that neither reference (nor a combination thereof) teaches such aspects and Applicant requests that the rejections be withdrawn.

In view of the remarks above, Applicant believes that each of the rejections/objections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the agent overseeing the application file, Aaron Waxler, of NXP Corporation at (408) 474-9068.

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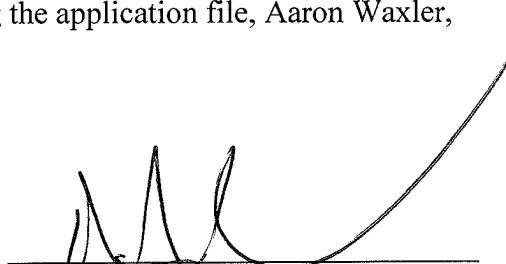
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